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# LAW ENFORCEMENT NEWS

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## Anatomy of a failure: Foundation report analyzes unsuccessful 5-year effort to overhaul Dallas PD

A report on the Police Foundation's five-year effort to effect massive organizational change in the Dallas Police Department has characterized the ambitious program as an "apparent failure," concluding, in effect, that both the foundation and the department had tried to accomplish too much in too short a period of time.

The first volume of the two-part document was released earlier this month at the foundation's Washington headquarters. Its purpose, according to authors Mary Ann Wycoff and George L. Kelling, is to serve as a "political and organizational history of the project" that would "help others in policing across the country to attempt change more manageably and to manage change better."

Begun in 1971, the Dallas project was one of the first efforts of the newly established foundation. "It was developed by the Dallas Police Department in collaboration with the Police Foundation at a time when the foundation was self-consciously attempting to articulate for itself a strategy for reform in policing," the report stated.

The foundation ultimately chose a radical approach, focusing on a whole-

sale overhaul of one law enforcement agency, rather than opting for incremental change in several police departments.

Wycoff and Kelling found two principal factors to account for the ambitiousness of the Dallas undertaking, citing the theory that "the problems in police agencies were too numerous and too urgent to wait for slow incremental remedies" and pointing to the political climate of the early 1970s, a period marked by "rising crime, increasing alienation between police and citizens, and police handling of the disturbances associated with civil rights and anti-Vietnam War movements."

With those problems in mind, Frank Dyson, who then headed the Dallas force, presented a "Five-Year Plan" to the Police Foundation, stressing "human resources development," an operational strategy for change, and the widespread use of "generalist/specialist" police officers.

According to the report, Dyson's specific goals included "upgrading the educational level of police officers, recruiting women and members of minority groups, validating police selection and promotion criteria, providing horizontal career development and opportunities for patrol officers, decentralizing administrative and

strategic decision-making to levels more closely in touch with community and neighborhood needs, and policing by teams of officers trained to serve as generalist patrol officers who would also be enabled to acquire skills."

A major portion of the first volume of the report is devoted to how Dyson's plans became unraveled. "The Dallas experience serves as one proof among many that Good Causes cannot ensure their own victories," the authors wrote. "That this maxim has not been better understood can be attributed in part to a lack of systematic attention to the process of implementation."

In a 41-page historical analysis of the project, Wycoff and Kelling noted that the push for speedy results became a source of upheaval within the police department and of dissension within the foundation, whose board and staff members differed on the best methods to upgrade the quality of police services.

Describing attempts to successfully implement the plan as a "power struggle," the report indicated that officers who opposed the project had managed to politicize the situation to their own advantage.

"Some officers did believe that the plan was too futuristic for Dallas, but in other

cases persons whose vested interests were threatened by the plan encouraged opposition," the authors noted. "They managed to take advantage of the uncertainty, misunderstanding, fear of change, and declining faith in management to rally opposition among the very officers who stood to benefit most from the program."

The interdepartmental conflict came to a head in the summer of 1973, when a demonstration in protest of the police shooting of a Mexican-American youth erupted in violence, resulting in injury to five police officers. While police action in quelling the disturbance was praised by city leaders and minority groups, the Dallas Police Association "accused the chief of not supporting officers in times of stress and generally criticized the handling of the Five-Year Plan," according to the report.

Meanwhile, the city's crime rate continued to soar, increasing 12 percent in July and 13.4 percent in August, the report said. On October 17, Dyson resigned and was succeeded by Donald A. Byrd, the department's present chief executive.

"One of Chief Byrd's first acts was to conduct an audit of the Dallas Police Department's expenditure of foundation

Continued on Page 2

## Detroit chief lauds citizens for role in 19% crime drop

An improved climate of police/community relations in Detroit, nurtured by a network of neighborhood police substations, has proven to be an effective crime deterrent, according to Police Chief William Hart, who noted that approximately 1,500 felons have been imprisoned due to the renewed spirit of citizen cooperation with the police.

Speaking to an audience of students at Michigan State University's College of Urban Development earlier this month, the administrator gave cooperative residents major credit for cutting the city's reported crime rate by 19 percent last year and by 15 percent during the first few months of this year.

Hart praised his officers for adopting strategies which led to closer ties with residents, observing that "one of the reasons crime dropped last year was the mini-station program."

The project, which was evaluated by the College of Urban Development, has been in effect for one-and-a-half years, during which time police officers became involved with neighborhood block groups, and citizens were recruited to work in the local substations.

Another important feature of the Detroit department's drive toward improving its community relations was the increased hiring of minorities and women. Hart stated that of the 1,000 officers hired last year, 500 were women and 80 percent were members of minority groups.

Noting that his force has one of the nation's highest proportions of female officers, the chief contended that the situation has led to a marked decline in police brutality, because "women in patrol cars just won't put up with that nonsense."

Some of the new recruits had worked as civilians in the community substations before joining the department, and Hart said that returning the new officers to their own neighborhoods has been effective in reducing crime.

The chief recalled one instance in which six recruits returned to a neighborhood where there was a homicide problem. "I knew since I was raised in a ghetto that these recruits probably would know who some of the killers were," he said. "Within three weeks we had 20 suspects in custody."

## Nation honors slain law officers



The nation observed Peace Officers Memorial Day on May 15, commemorating law enforcement officers who have died in the line of duty. International Association of Chiefs of Police President Howard C. Shook commented on the occasion, noting, "In the first three months of this year, 14 local, county, state and Federal police officers have been slain as they attempted to perform their duties and carry out the mandate given them by the people — protecting life and property." Pictured is the Minnesota Law Enforcement Memorial Monument, which was dedicated at the Minneapolis-St. Paul Airport.



## Oklahoma City PD proposes \$9.5M expansion program

The Oklahoma City Police Department has drawn up an ambitious \$9.5 million capital improvement plan that includes the extensive remodeling of its headquarters complex, the implementation of a one-officer patrol car program and construction of a new "bicing" station.

Submitted in the form of a bond issue request, the proposals are scheduled to be forwarded first to city administrators and then to a citizens' planning committee before the end of May.

Police Chief Tom L. Heggy told the Oklahoma City Times that the package requests \$1 million for renovations of the department's academy, more than \$560,000 for expansion of the police helicopter squad and \$1 million for construction of an expanded downtown communications center.

"We have after several months of study come up with a list of projects we will be working to have funded during the next year," the chief said. He added that the tentative appropriation for police headquarters includes \$500,000 to tighten security and realign office space in an existing building and \$2.5 million to construct new quarters for the force's youth bureau and crime lab.

In addition to updating the department's physical facilities, the bond proposal would also provide \$3.7 million for a one-man-one-car project.

## LEAA diversion program seeks TASC-oriented proposals

The Law Enforcement Assistance Administration is soliciting grant applications to its Treatment Alternatives to Street Crime (TASC) program, an ongoing effort designed to reduce drug-related crime by referring appropriate offenders to community-based treatment programs.

Under the TASC plan, a central administration unit in a county or city coordinates the activities of three functional components, consisting of a screening unit to identify potential drug abusers, an intake

unit to assess and refer clients to appropriate treatment and a tracking unit to monitor the progress of clients in treatment.

TASC grants, which are awarded for a 15-month period, range from \$100,000 to \$450,000 a year. However, they require a ten percent cash match.

Although eligibility is limited to jurisdictions with a population of at least 200,000, cities and counties may combine their applications to achieve the residency requirement. Pre-planning assistance will be provided to all potential applicants, but community treatment must be available in communities applying for a TASC grant.

For complete details, contact: Corrections Division, Office of Criminal Justice Programs, Law Enforcement Assistance Administration, 633 Indiana Avenue, N.W., Washington, DC 20531. Telephone: (202) 376-3944. Applications must be submitted by June 1, 1978.

## Bell agrees to meetings with nation's top police officials

Attorney General Griffin B. Bell recently approved an International Association of Chiefs of Police plan which calls for regularly scheduled meetings between his office and a committee of top local, state and Federal police executives.

In announcing the formation of the panel, IACP President Howard C. Shook noted that the committee would be the first of its kind to meet regularly with an Attorney General of high level designee representing the Department of Justice to discuss matters of mutual interest. "Police should be assured by this positive step by Judge Bell that Washington is interested in what police are facing across the country and in listening to our concerns and our ideas," he said.

Shook, who heads the Middletown Township, Pennsylvania police force, has already picked five law enforcement administrators to serve on the committee, including Clinton L. Pagano, superintendent of the New Jersey State Police; Earl Burden Jr., Chief of the Columbus, Ohio police; Robert C. Gilroy, chief of the Kutztown, Pennsylvania, Police Department; Odell H. Sylvester, Jr., the police chief of Berkeley, California, and H. Stuart Knight, the director of the U.S. Secret Service.

Joining Shook and the other five administrators on the panel will be Glen R. Murphy, IACP's legal counsel and director of Governmental Relations, and Glen D. King, the association's executive director.

"This committee of IACP members represents the necessary liaison that must

exist between the office of the United States Attorney General and law enforcement," King said, explaining that the committee members and the areas they represent have a definite need to meet regularly with the top law enforcement official in the nation.

"Just as law enforcement's activities impact on the Department of Justice, so do the workings of Washington have a very definite reaction in police affairs," the IACP director added. "We are not going to be advising, we are going to be listening and offering our views on trends in policing and matters of mutual concern."

King's remarks were echoed by Deputy Attorney General Benjamin R. Civiletti, who is expected to be the main Justice Department participant at the meetings.

"We believe that law enforcement and the areas served by the various levels represented on the committee will benefit from the exchanges that are certain to occur," he said. "Anything which will expand the communication between our agencies surely is a move in the right direction."

## Police Foundation study details attempted change in Dallas PD

Continued from Page 1

grant money," the report stated. "This audit resulted in headline press coverage and praise from the Dallas Police Association. No irregularities of expenditures or procedures were found."

In spite of the clean bill of health given the financial end of the program, the scope of the Five-Year Plan was sharply reduced. "Although many of the [individual] programs were continued at a reduced level of activity, the evaluation of the program demonstrates that the goals were not achieved," the authors noted.

The report described the project's problems under four main headings: risk and uncertainty, communicability, complexity, and gatekeepers or decision-makers.

Risk was involved because there was no guarantee that the proposed changes would not actually decrease the department's organizational effectiveness, the report said, and officers were uncertain about the plan's impact on their work hours, days off and vacation time.

Discussing communicability, the authors noted that the plan was difficult to explain because of its comprehensive nature and because the officers had no previous experience with the proposed changes. "That many of the ideas were presented as goals whose operational nature was not defined was also confusing," the Police Foundation report added.

In terms of the complexity of the program, Wycoff and Kelling wrote that the total package consisted of more than 20 projects "being planned or made operational at one time," including some funded by LEAA. Additionally, the "external environment" surrounding the Five-Year Plan was complicated "by the involvement of the press, candidates for local political office and ideological citizens groups," according to the study.

Regarding the category of who actually controlled the destiny of the plan, the authors wrote: "For the Dallas project, there were gatekeepers (decision-makers) within the Police Foundation and the city organization, and within several units and levels of the department. The interests and styles of the gatekeepers differed and the department frequently was caught conflicting expectations."

The second volume of the report, which included a statistical analysis of the evaluation of the project and the methodology used, indicates that while the educational levels of department personnel increased during the program period, "there has been little change in three years in the measured attitudes and performance of Dallas police officers."

However, Wycoff and Kelling observed that while the empirical findings show no change, the department has experienced substantial development. "Managers and supervisors at all levels have gained skills, experience, and wisdom," they said. "Officers, in general, are more accustomed to new ideas and practices. The department continues to attempt change."

In a prologue to the report, Chief Dyson, who now heads the Austin, Texas police force, indicated that police managers should examine the lessons learned from the Dallas experiment. "If we don't we will all remain on the endless treadmill of repeating each other's mistakes, not understanding that some of these problems are inevitable and that our successes and failures are not unique; they do have common patterns, themes, histories."

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## New offender surveys issued; 1977 prison population up 5%

The scope of the nation's criminal justice system as it relates to convicted offenders was revealed in two separate LEAA reports recently — one indicating that over 1.4 million individuals were on probation or parole in the fall of 1976, and the other noting that there was a record 292,325 inmates in state and Federal prisons at the end of 1977.

The prison survey, entitled "Prisoners in State and Federal Institutions on December 31, 1977," found that last year's prison population surpassed the previous record total of 1976 by about five percent. State institutions accounted for 261,405 of the inmates, while Federal prisons held 30,290 prisoners.

Although the report contains only a preliminary analysis of the figures, it noted that the 1977 total included 12,055 women, representing a 10 percent increase over the previous year, and 1,678 persons held in local jails because of overcrowding in state institutions.

An additional 5,313 inmates incarcerated

in local facilities due to overcrowded conditions were not included in the total because correctional authorities in some states do not consider such prisoners to be in state custody, according to LEAA.

The other report, based on the first national survey of state and local probation and parole agencies, stated that on September 1, 1976 there were 923,064 adults on probation and 156,194 on parole, as well as 328,854 juveniles on probation and 53,347 on parole.

Males accounted for 86 percent of the adult probation caseload, 90 percent of the adult parole caseload, 77 percent of the juvenile probation caseload, and 80 percent of the juvenile parole caseload, according to the survey, which was conducted for LEAA by the Bureau of Census.

Analyzing the offenders according to the seriousness of their crimes, the report stated that 50 percent of the adults under probation supervision were felons and the other half were misdemeanants. The juvenile offender statistics showed that 72 percent of the males and 59 percent of the females were adjudicated delinquents, while the others were status offenders — children who have committed an act that would not have been an offense for an adult.

Entitled "State and Local Probation and Parole Systems," the report includes a state-by-state analysis of probation and parole agency organization and jurisdiction. Overall, the agencies employed 55,807 individuals, 60 percent of whom were engaged in the direct counseling and supervision of probation or parole clients.

While the national average number of offenders per counselor was 48, the professionals were supported by a volunteer force of 20,263, the report said.

In regard to payroll funding, the survey found that states provided some financing to 63 percent of the agencies, counties were the primary source of funding for 42 percent of the organizations, and municipalities

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## IACP exec board votes support of FBI, proposed ATF gun rules

In two separate actions, the governing body of the International Association of Chiefs of Police has issued strong statements of support for the "high-caliber performance" of the FBI and for the new gun regulations proposed by the Bureau of Alcohol, Tobacco and Firearms.

Meeting in Washington last month, IACP's Executive Committee called on citizens not to overlook the positive contributions to personal liberty that have been made by the FBI. "The high-caliber performance of the FBI has been very effectively clouded by some over allegations of inappropriate activity," Howard C. Shook, the association's president, noted.

Shook, who heads the Middletown Township, Pennsylvania, Police Depart-

pressed hope that the three would be given their full constitutional rights. "There is in our system a presumption of innocence until guilt is proven," he said. "Some elements of our society have already tried these men as well as the FBI as an agency and have pronounced them guilty. That is not just, nor is it in the best interest of our system of justice."

IACP Executive Director Glen D. King called the bureau "a good strong, viable organization," based on its past record of performance. "To forget the constructive aspects of the FBI is not in the best interest of this country," he said. "There are literally thousands of dedicated employees who must not be forgotten. Law enforcement in this country is the first to recognize what the FBI has done over the years to make this a safe and tranquil nation, and we are happy to express our continuing support."

In an earlier pronouncement, the Executive Committee threw its backing behind soon-to-be-implemented ATF regulations designed to curb illegal weapons traffic. The proposed rules would require that every new firearm have a unique serial number and that manufacturers, wholesale dealers and importers file quarterly reports on the disposition of each weapon they produce or handle.

"The tracing capability that will be available to police will enhance the investigative ability immensely," Shook said of the ATF proposals. "There is no question about the problems associated with the illegal sale of weapons, and if these rules will alleviate some of the problems, then we must support ATF."

One committee member challenged a claim of critics of the regulations, pointing out that the rules do not require the registration of handguns or long guns by individuals.

Meanwhile, Shook stressed the need for the regulations, noting, "As responsible law enforcement officers, we must recognize the necessity to protect the citizens of our various jurisdictions and we believe that the proposed ATF rules will assist us toward that end."

## O'Grady fills top spots in Chicago PD

Chicago Police Superintendent James O'Grady made a number of high level personnel changes in his administrative staff late last month, filling some key positions that were left open through retirement and promotion.

As was expected, O'Grady chose Samuel Nolan, the department's highest ranking black officer, as his second in command, promoting the veteran executive to first deputy superintendent in charge of the Bureau of Operational Services.

Nolan, 58, had been one of the three candidates, along with O'Grady and former Nassau County, New York Commissioner Daniel Guido, for the superintendent's job. He replaces former first deputy Michael A. Spiotto, who retired to private industry after serving for the past six months as acting superintendent of the Chicago force.

In other top promotions that were announced by O'Grady on April 26, Victor Vrdolyak was made deputy superintendent in charge of the Bureau of Investigative Services, Walter Murphy was promoted to deputy superintendent and head of the Bureau of Inspectional Services, and Raleigh Mathias was named deputy superintendent of the force's Bureau of Community Services.

The new superintendent picked Raymond Clark to succeed him as chief of the Criminal Investigation Division, while Earl Johnson was placed in charge of the Patrol Division, Dennis Deneen was promoted to command the Intelligence Division, Ivan Rittenberg was appointed as administrative assistant to the superintendent, and Marshall Considine was named director of the Criminalistics Division.

Since all of the promotions were made from within the department, O'Grady will have to fill a number of lower echelon posts, which he said would remain open for the present time.

Commenting on last month's appointments, which put new men in all but one of the force's deputy superintendent positions, the superintendent said, "I am confident these men will continue in the tradition of their predecessors to make this the best police department in the country."



IACP President Howard C. Shook

ment, did not directly address the recent indictments of former Acting FBI Director L. Patrick Gray and two top bureau executives, W. Mark Felt and Edward S. Miller, noting that IACP feels it inappropriate to comment on the ongoing case.

However, the association president ex-

## Gallup poll finds urban police rank high in public favor

The nation's urban police forces received a public vote of confidence last month when a Gallup poll revealed that 47 percent of the city-dwellers surveyed rank police departments in the top of the numerous institutions, services and facilities provided by their cities.

While law enforcement ranked just below fire and sanitation departments among the 50 municipal services included in the poll, courts and correctional facilities received low marks, finishing at the bottom of the list along with public transportation and local government.

The poll, conducted by George Gallup's American Institute of Public Opinion in conjunction with the Charles F. Kettering and Charles Stewart Mott Foundations, was designed to determine which features of urban life are considered most satisfactory as well as those most in need of improvement.

In spite of the high ranking achieved by police in the survey, participants generally responded that to halt or at least reduce the exodus from the nation's cities, it will be necessary to improve many city services.

Although the uniformed services of fire, sanitation and police have been the subject of criticism from various quarters over the

past few years, they collectively were rated higher than any other aspect of urban life studied. The fire department was given one of the top three grades by 64 percent of those surveyed, while the sanitation department was rated in the upper three services by 59 percent of the city dwellers.

Other services which received significant public acclaim were city hospitals and health care facilities, with 54 percent of the top three vote, public schools, with 42 percent and municipal parks and playgrounds, also with 42 percent.

The public systems that were given low percentages of favorable response included public transportation, with 28 percent, downtown shopping, with 28 percent, traffic and parking facilities, with 15 percent, and local government with 20 percent. Courts received only 19 percent of the positive ratings, while municipal correctional facilities were given a 14 percent rating.

Another significant finding of the poll indicated that the type of residents the cities could least afford to lose, the younger, better educated and more affluent citizens, generally registered the greatest dissatisfaction with municipal services, institutions and facilities.

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# Supreme Court Briefs

Following are summaries of recent decisions of the United States Supreme Court that affect law enforcement and criminal justice.

By AVERY ELIOKIN  
Right to Counsel

Chief Justice Burger announced a 6-to-3 decision of the Court which broadened the scope of the Sixth Amendment guarantee of "assistance of counsel," in addition to establishing a precedent that: "Whenever a trial court improperly requires joint representation over timely objection reversal is automatic, and prejudice is presumed regardless of whether it was independently shown."

The three petitioners were arrested in connection with a restaurant robbery in Little Rock, Arkansas in which each of the two female employees was raped. All three men were charged with one count of robbery and two counts of rape. The trial court appointed one public defender for all three defendants.

Within two weeks of the appointment, and after defense counsel had an opportunity to consult individually with each client, the public defender entered a request that the court appoint separate counsel because "the defendants had stated to him that there is a possibility of conflict of interest in each of their cases." After a hearing the court declined to appoint separate counsel.

Three weeks later, but before a jury had been empaneled, the motion for separate counsel was again placed before the judge by defense counsel "on the grounds that one or two of the defendants may testify and if they do, then I will not be able to cross-examine them because I have received confidential information from them." In denying the motion, the judge responded, "I don't know why you would."

All three co-defendants testified and each was subsequently convicted. The Arkansas Supreme Court affirmed the convictions, reasoning that "the record must show some material basis for an alleged conflict of interest, before reversible error occurs in single representation of co-defendants."

The U.S. Supreme Court's opinion, written by the Chief Justice, stated that the 1942 decision *Glasser v. United States*, 315 U.S. 60, paved the way for overturning the convictions of the three men stemming from the fact that the Court had held "the assistance of counsel guaranteed by the Sixth Amendment contemplates that such assistance be untrammelled and unimpaired by a court order requiring that one lawyer should simultaneously represent conflicting interests." In arriving at its decision the Court's majority held that "the failure in the face of the representations made by counsel weeks before trial and again before the jury was empaneled, deprived petitioners of the guarantee of 'assistance of counsel.'"

In establishing the precedent that reversal must be automatic, the Court turned to *Chapman v. California*, 386 U.S., at 23, where the Court had previously held that the "assistance of counsel is among those 'constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error.'"

Justice Powell, in a rather long dissent in which he was joined by Justice Blackmun and Justice Rehnquist, stated that he "cannot agree that in the particular circumstances of this case, the court's failure to

inquire requires reversal of petitioners' convictions." Relying on a 1973 decision of the Court of Appeals for the Second Circuit (*United States v. DeBerry*, 487 F.2d 448), Powell said that the "trial court is under a duty to conduct 'the most careful inquiry to satisfy itself that no conflict of interest would be likely to result and that the parties involved had no valid objection.'"

However the dissent also argued that since the trial judge was remiss the "burden shifted to the State to establish the improbability of conflict or prejudice." The State, the minority felt, had demonstrated that there existed no basis "for a reasonable inference that 'conflicting interests' hampered a potentially effective defense."

The other major objection raised by the minority concerned the "seeds of a per se rule of separate representation merely upon the demand of defense counsel." (*Holloway v. Arkansas*, No. 76-5856, announced April 3, 1978.)

## Judicial Immunity

In a 5-to-3 decision, the Supreme Court ruled that "a state judge who approved the sterilization of a 15-year-old girl is completely immune from her subsequent damage suit, even though there was no authorization for his action in any state law or court decision."

In 1971 the Hon. Harold D. Stump, a judge in the DeKalb County Circuit Court, approved a sterilization operation on Linda Kay Spidler after her mother had the family attorney draft a "petition" and present it to the court. At the time of the operation, the girl was told that it was merely an appendectomy.

In 1973 Miss Spidler married, learned that she could not become pregnant and found out the true nature of her operation. She and her husband subsequently sued her mother, her mother's attorney, the judge, the doctors and the hospital in which the surgery was performed, claiming six constitutional violations.

A district court ruled that only Judge Stump could be sued because "he was the government official responsible for all subsequent events." However, the court held that he was entitled to absolute immunity for official acts even if they were based on "an erroneous view of the law."

On appeal the United States Court of Appeals for the Seventh Circuit reversed and held that the judge had "not acted within his jurisdiction" and had no right to immunity protection "because of his failure to comply with elementary principles of due process."

While taking into account that there was no law or court decision which authorized the act, the Supreme Court noted that it was "more significant that there was no Indiana statute and no case law in 1971 prohibiting a circuit court from considering" the mother's request.

Associate Justice Byron R. White wrote in the majority decision: "A judge will not be deprived of immunity because the action he took was in error, was done maliciously or was in excess of authority," adding that a judge "will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'"

The primary issue of law on which the Supreme Court chose to rule did not re-

## BURDEN'S BEAT

By ORDWAY P. BURDEN

# Reducing personal liability for Federal law enforcement agents

Recently I had the opportunity to testify before a House subcommittee in support of a piece of legislation of vital interest to the Federal law enforcement community, and of indirect but nonetheless significant importance to state and local police officers.

The bill, H.R. 9219 or The Tort Claims Bill, would amend Title 28 of the United States Code to provide for an exclusive remedy against the United States government in suits based upon acts or omissions of Federal employees. In other words, citizens with grievances against Federal law enforcement personnel — either constitutional violations or actual injuries — can seek redress from the government. This piece of legislation will at the same time protect Federal law enforcement officers from personal liability in providing damages and legal fees.

I believe that the principles of the bill — that is, providing some sort of coverage for Federal law enforcement agents while also giving recourse to injured citizens — are sound and salutary. The aims and activities of officers can run counter to the rights of citizens, and there will sometimes be cases in which an officer acting in good faith to achieve a necessary goal will infringe upon a citizen's rights or property.

Introduced by Rep. Peter Rodino, (D-N.J.) the Tort Claims Bill has been examined in hearings before the House Judiciary Subcommittee on Administrative Law and Governmental Relations. Among those who testified in its behalf were Frank Carrington, Executive Director of Americans for Effective Law Enforcement; Robert D. Gordon, Secretary-Treasurer of the International Conference of Police Associations; Glen K. King, Executive Director of the International Association of Chiefs of Police; John McNerney, President of the Federal Criminal Investigators Association, and R. Pat Stark, President of the Fraternal Order of Police.

In the tort area, citizens should have the same right of compensation they would have if injured by another private citizen or company. The law of torts is predicted on the principle of compensating the victims of negligence. However, in the past the right of aggrieved citizens to collect damage awards has been unfairly limited. Often citizens have been forced to rely on the private purses and insurance companies of law enforcement officers, a cruel and unfair custom to plaintiff and defendant alike.

John S. McNerney, President of the Federal Criminal Investigators Association, has attempted for several years to obtain legal insurance for his membership, and has concluded that such insurance simply does not exist. He is now considering self-insurance for F.C.I.A. members.

This proposed legislation will at last remove a sword of Damocles from above the heads of our well-intentioned law enforcement officers. Just as citizen is entitled to receive compensation as awarded by a court, so the officer should be relieved of the threat of personal bankruptcy arising out of the performance of his duties.

The Tort Claims Bill will substitute the United States for the law enforcement officer as the responsible party in a tort action. Since the officers are working for the United States, it seems only fair that the government admit its responsibility and step into the breach. This bill pursues a far more responsible avenue in attempting to solve the problems of both the aggrieved citizen and the harassed law enforcement officer than has been taken in the judicial arena in recent years, when doctrines such as "sovereign immunity" and variations of "official immunity" have sought to leave citizens without any forum in which to obtain relief.

This piece of legislation also includes safeguards against absolving an officer who has clearly exceeded the limits of his office and should be held personally liable. Specifically the bill provides that whenever a decision is made against an officer, the matter must be reviewed by the agency within its own disciplinary framework.

Such intra-agency disciplinary review is superior, from the point of view of public policy, to exacting money damages from the officer. The latter procedure leaves all officers, the good as well as the bad, open to threats of financial ruin, while the former enables administrators to weed out those few agents who have shown themselves unsuited to their work.

Furthermore, the outcome of a trial is a matter of compromise. In the give and take of our judicial system, a competent, honest officer acting correctly and in good faith, could conceivably injure a citizen in the performance of his duty. In such a case, the officer who has acted in good faith would not be penalized even if the plaintiff sues and recovers a judgment.

Striking a balance between civil liberties and the legitimate concerns of the law enforcement community, the Tort Claims Bill appears to be a worthy piece of legislation. It contains provisions which bolster the morale of the law enforcement officer and encourage his good faith in the performance of his duty, without the constant fear of being sued by the very people he is seeking to apprehend for crimes against our society and without the danger of administrative discipline when he has acted in good faith.

(Mr. Ordway P. Burden invites correspondence to his office at 651 Colonial Blvd., Westwood P.O., Washington Township, New Jersey 07675.)

involve around the irreversible damage suffered by the woman but rather on whether the act of signing the "petition" was a "judicial act" which would be protected by the Courts' 100-year record of judges' immunity. The majority ruled that since Judge Stump had jurisdiction to review the mother's request his signature was "a judicial act."

Justice Potter Stewart, in a fiery dissent,

wrote that the mother's "false illusions" with regard to the judge's power "can hardly convert a judge's response to those illusions into a judicial act." He further stated that "a judge is not free, like a loose cannon, to inflict indiscriminate damage whenever he announces that he is acting in his judicial capacity."

The minority position set forth by Associate Justice Potter Stewart, in a fiery dissent,

Continued on Page 6



# Jay Robert Nash ON CRIME

## Michigan's black-robed brotherhood of blood

In the late 1920s, the fiery horrors of the Ku Klux Klan had subsided to motley bands in the rural South, yet years later the progressive Northern state of Michigan was to witness an even stranger sect of brotherhood bent upon purity of race and religion through purges of blood. In lieu of the KKK's traditional white sheets, its members wore black robes and hoods. But like the Klan, the brotherhood's thugs carried every conceivable weapon, from blackjacks and pistols to knives and axes. Its leaders called the organization the Black Legion.

Michigan police, particularly the homicide squad in Detroit, were perplexed and helpless in early 1935 when a rash of fatal floggings occurred. In May of that year a Detroit Negro named Silas Coleman was found in a swamp 40 miles from Detroit, his body was riddled with bullets. The hacked-up remains of a union organizer, John Bielak, were discovered a short time later outside of Monroe. Edward Armour was shot to pieces by a carload of shotgun-toting men as he walked a Detroit street. Though he lived, Armour could not reason why he had been blasted. None of the crimes were related to the underworld; the

authorities had long since smashed the fierce Purple Gang.

Then in May 1936, a shot-up corpse was found at the wheel of a car in a ditch of Gully Road on Detroit's far West Side. Police found a number of spent cigarettes crushed all about the car and some empty .38 shells nearby. The murdered man, who had five bullets in him, yielded fingerprints that subsequently identified him as Charles Poole, who had once been arrested for vagrancy in Dodge City, Kansas. Why Mr. Poole would be executed was anybody's guess.

Coincidence intervened. A couple coming into the Detroit morgue to identify a traffic accident victim stopped short when they spied Poole's uncovered body. "I know that man," said the woman. "He was a friend of my brother's. We called him Chap, but none of us have seen him in a good long while. People say he's been running around with a man named Tennessee Slim."

More citizens came forward. Mrs. Robert White and Mrs. Harvey Burke told authorities that Poole's wife was in the hospital, about to have a baby. Detectives

waded through a bevy of relatives and neighbors who had known the Pooles. Tennessee Slim was finally identified as Harvey Davis, an employee of the Public Lighting Commission; he was arrested on suspicion of murder.

Detective Havrill tracked down Owen and Marcia Rushing, friends of the slain Poole. He told them of Davis' arrest. The couple walked nervously about their home. Mrs. Rushing seemed on the verge of collapse. "What's your wife hiding, Owen?" Havrill challenged. "See, she's eating her heart out. . . . Come on, fella, don't let her go on like that."

Suddenly Mrs. Rushing burst out with: "We can't tell you. You don't know these people!"

"People? What people?"

"That. . . that organization! They kill people that talk. They carry guns and there are thousands and thousands of them — like Ku Klux Klan, only bigger and more awful!"

The grim story of the Black Legion unraveled. Police began to pick up members. Erwin Lee was found with a .38 and black-jack; John Bannerman's home was piled high with the legion's robes, all of black satin with white trim and a skull-and-cross-bone insignia. When Detroit police arrested Dayton Dean, they possessed the key to the legion's murder spree. Dean talked endlessly (and fearlessly) about the organization and "Colonel" Harvey Davis, the leader. Posing under its pseudonym, the Wolverine Republican League, the Black Legion, detailed Dean, stood for 100 percent Americanism — white, native-born and Protestant. This secret vigilante brotherhood existed to defend decency in the U.S., their primary function being to protect American womanhood.

Through Dayton Dean, police learned that "Colonel" Davis had decreed Poole's death, claiming that Poole had so severely

beaten his wife that his unborn baby had died. Seven of the Legion, wearing their black robes, took Poole for a ride and all took turns shooting him. Dean, who had inveigled Poole to the killing spot where Davis barked his death sentence, was told that the Poole child had lived. He was "shocked," but, he added, in the tone of what Nazi leaders would later take at the Nuremberg trials. "A horrible mistake, but I was just following the orders of my superiors."

Dean, who had been a member of the KKK in 1922, joined the Michigan Black Legion in 1933 at about the time of its establishment by Davis and others. It was out to eradicate all Jews, Catholics, Negroes, communists and anarchists in the name of American freedom. Initiation rites were written in terror, with new members forced to kneel in a circle while black-robed members stood behind them with pistols to their heads. They chanted a long, rambling oath in quaking unison which in part read: "In the name of God and the Devil, one to reward, the other to punish, here under the black arch of Heaven's avenging symbol. . . I will exert every possible means in my power for the extermination of the anarchist, communist, the Roman Hierarchy, and their abettors. . . . I will show no mercy, but strike with an avenging arm as long as my breath remains. . . . I pledge. . . never to betray a comrade, and that I will submit to all the tortures mankind can inflict, rather than reveal a single work of this, my oath."

The Legion boasted 20,000 members in Michigan, stated Dean (who later would be portrayed by Humphrey Bogart in the Warner Brothers film "Black Legion"), and he placed the murder of Negro Silas Coleman at Davis' feet. The "Colonel" wanted "a nigger to shoot" and killed the hapless Coleman with a .38 after telling him to run for it through the swamp. Bielak, Armour and scores more were marked for death for the same racial and political reasons.

The Legion, under tremendous pressure from the law and publicity, broke to pieces. Davis and his chief cohorts received life sentences. Following their trial, thousands of black robes were found in garbage cans and city dumps all over Michigan.

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## Supreme Court Briefs . . .

Continued from Page 5

sociate Justice Lewis F. Powell Jr., Stewart and Thurgood Marshall contended that approval of the sterilization "petition" without a hearing notice to the child or any legal representation for her was "beyond the pale of anything that could sensibly be called a judicial act." The minority also mentioned that the Court's decision had "cut off any possible legal recourse that the daughter and her husband had for the treatment to which she had been subjected."

In comments made to the New York Times, Bruce Ennis, legal director of the American Civil Liberties Union, stated that the decision meant that "judges can violate citizens' constitutional rights and get away with it [and] can ignore the law with impunity." Ennis said that his group would ask Congress to "approve legislation reversing the decision."

Associate Justice William J. Brennan Jr. took no part in the consideration of the case due to his absence from the Court last winter. (Stump v. Sparkman, No. 76-1750, announced March 28, 1978.)



# Predict continued growth of college-level CJ programs

The executive director of the National Commission of Police Higher Education recently reported that college-level law enforcement programs will continue to thrive but that there is a need to improve the quality and institutional support of the programs if they are to be effective.

Speaking before the annual meeting of the Criminal Justice Educators Association of New York State last month, Dr. Lawrence Sherman cited the commission's findings which indicate that enrollments in police-related studies are not expected to decline appreciably, largely due to the number of community colleges that offer such curricula.

There are more than 1,000 law enforcement/criminal justice programs in the United States, Sherman said, adding that educational opportunities for pre-service students and job opportunities for graduates will be generally good in the near future.

Sherman's commission, which is funded by the Police Foundation, has held public hearings, has commissioned research papers and has communicated with over 200 organizations in attempting to define the state of the art in police higher education and to make recommendations for improvement.

The executive director compared the progress made in law enforcement studies with the growth of other professional disciplines, noting that there are parallels which indicate that the quality of criminal justice programs will continue to improve. He specifically cited the efforts of the Academy of Criminal Justice Sciences (ACJS), which is in the process of developing standards and accreditation guidelines for such curricula. Tracing the various goals of police higher education, Sherman outlined the traditional view of "broadening"

the individual, the vocational concept designed to "train" or educate police personnel, the view of education as a means of introducing elements of change into the system, and the crime-related view which stresses reduction of crime as the primary goal. He also mentioned the concept of professionalization through higher education.

Emphasizing that a liberal arts core is needed for proper undergraduate preparation, the executive director said police education should not be viewed as training. He noted that, ideally, police programs should be housed in arts and sciences departments, and should not be part of paraprofessional type studies, such as arts, mechanics or cosmetology.

"Colleges have got to provide the resources for police educational programs," he declared, noting that the institutions should hire more full-time faculty who have appropriate credentials, with an emphasis on doctorate holders.

Two other areas discussed by Sherman were the need for adequate support services, such as relevant library acquisitions, and the "need for providing a residential type experience" for criminal justice students.

—R. H. Ward

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## Calif. attorney general names 92 as organized crime figures

California Attorney General Evelle J. Younger recently identified 92 individuals who he says are leaders of the state's organized crime network in a report that features photographs, addresses and brief biographies of the alleged crime figures.

The report, which Younger released earlier this month as the first publication of his 10-month-old Organized Crime Control Commission, contends that there has been an increase of mob activity in California that is linked to crime groups in New York, Chicago and other cities.

Noting that the profits of organized crime in the state have increased to \$6.8 billion annually, the commission said that in the last five years approximately 50 "organized crime figures have either moved to or invested heavily in California."

In regard to its directory of alleged mob figures, the report noted that the 92 men on the list have been associated "with organized crime activity," and that their connection with such crime has been "substantiated by the commission through various sources."

Included in the profile section were a number of individuals who had been previously identified by police officials as having been linked to criminal organization. The report described one such figure, James Fratianno of San Francisco, as "California's most well-known Mafia figure."

However, the directory also profiled a number of prominent business and labor leaders who had never been publicly characterized as organized crime figures. One such entry on Sidney R. Korshak, a Beverly Hills attorney who is known to frequent Hollywood parties, called the lawyer "the key link between organized crime and big business."

The report further charged that Korshak associates with Morris Dalitz, who is also on the list, and other criminals, noting that the attorney's "involvement with organized crime was confirmed in testimony before the Organized Crime Control Commission."

Another surprise entry was the name of Michael Rudy Tham, the business manager of Local 856 of the International Brotherhood of Teamsters in San Francisco. "During the past three years, Tham has been the almost constant companion of James Fratianno," the report said, adding that the labor leader has been "observed in conference with nationally known Mafia figures."

In a telephone interview with a New York Times correspondent, Tham said he had nothing to do with criminal organizations. "If I was with organized crime, I'd like to know why I sat in Evelle Younger's office and discussed teamster matters with him," he noted.

While the union official criticized the

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## PUBLIC FORUM

By THOMAS SPRATT

## Involvement: the key to opening the closed fraternity of police

Not too many years back, the urban foot patrolman and the rural sheriff blended into the population with such an intimate familiarity that the term police/community relations had no meaning and in effect did not exist. It did not exist simply because there was no perceivable dichotomy between the two terms; the policeman was a part of the community and vice versa.

As times changed, and our society became more mobile and less stable, our law enforcement agencies responded by centralizing administrative efforts and wrapping individual personalities in about 5,000 pounds of glass and steel, then further hurrying these personalities in a virtual sea of forms and reports. As if this wasn't enough, the policeman rapidly began to develop a language indigenous to this profession which further widened the gap between himself and the community and greatly strengthened the phenomenon known as the closed fraternity.

In the middle '60s and early '70s, the closed fraternity exploded against another societal element which had more or less divorced itself from the mainstream of American life—the protestor—and the repercussions were staggering. Almost as a direct result of these confrontations, the policeman assumed added stature, almost a martyr image, which was and is greatly enhanced by the entertainment media.

All sorts of people jumped on the criminal justice bandwagon. Politicians were elected by promising to make the streets safe, cop shows filled the air, enormous sums of money were pumped into every conceivable police program, and buzz words like innovative, team policing and management style filled pages of books, editorials, journals, and periodicals. Despite it all, however, with the exception of creating a few job expansion programs for former members of the police community, little changed within the policeman's subculture. The policeman managed to survive the turmoil and subsequent investigations and studies, and emerge much the same as before. Because of a host of reasons, policing—and criminal justice as a whole—simply has not been able to effectively amalgamate with community resources, the objective sought in so many police/community relations programs. The policeman is still wrapped in 5,000 pounds of steel, still buried in a mountain of red tape and still comfortably ensconced in a world where everything is black and white, with the gray being only that of his own choosing. And, as the frightening specter of public safety collective bargaining grows, the closed fraternity becomes increasingly a monster which has already demonstrated its ability to violate the very laws it has sworn to enforce, further alienating the community.

What the police field needs is a return to the community, and the ability for a police department to use all of its members, not just special units, to cultivate the vast popular resources which are available. Closing the door tighter and shining the badge brighter is certainly no way to achieve the important and necessary police/community intermingling needed for maximum effectiveness in criminal justice. As stated earlier, there are many reasons why police departments, for the most part, do not have the ability to use the vital human resources within their jurisdictions. But first we must realize that so much more can be done by looking outward rather than inward and we should make every effort not to fall into the traditional police model and build a wall surrounding ourselves, excluding all but our own. Donald Santarelli, a former director of LEAA, made a statement to this effect: "You can spend all the money you want to, develop all the programs money can buy, but unless you get people involved, you're not doing anything." History appears to prove that Mr. Santarelli was correct in his summation and historically police departments have failed to get enough people involved.

## Letters to the editor

To the Editor:

The present clash between the I.A.C.P. and the League of Cities over the possibility of police executives having tenure is of concern to me. The position of the I.A.C.P., as expressed by President Howard C. Shook, seems to place the organization into a position of advocating security over improved management. I suggest that President Shook, and the other executives of the I.A.C.P. need only look at the benefits that tenure has brought to education to find that security in a position does not necessarily cause the individual enjoying such a benefit to take chances and to try new ideas. It seems that such a benefit to police executives would greatly hinder any attempt on the part of any top level public sector manager to make positive changes in the community's governmental structure.

The I.A.C.P. seems to be attempting to insulate its membership from the realities of the field of public administration, to which all of us in the field must pay attention. If the tenure proposal of the I.A.C.P. were widely accepted the area of law enforcement management would suffer. It would seem that fewer police managers

would attempt to make necessary changes, and to take new, pro-active, approaches to known problems. A possible alternative that would have less impact on the field would be for police managers to have contracts for specific time spans, and the contract could then be renewed, or ended after the term expired.

I suggest to the I.A.C.P., and President Shook that we in law enforcement must join our fellow public administrators and accept the reality of working in the public sector.

Hal Nees  
Boulder, Colorado

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# Inside the National Institute

## An interview with David Farmer, Director of the Police Division of the National Institute of Law Enforcement and Criminal Justice

LAW ENFORCEMENT NEWS

May 16, 1978

David J. Farmer is director of the Police Division of the National Institute of Law Enforcement and Criminal Justice (NILECJ), the research branch of LEAA.

The former public safety commissioner of Park Forest South, Illinois, Farmer had served with the New York City Police Department as Director of Operations Management and as special assistant to the commissioner before assuming his NILECJ post.

Farmer's career has encompassed both the theoretical and practical sides of policing. He has been a consultant to approximately 50 law enforcement agencies throughout the nation and to the National Advisory Commission on Civil Disorders.

The author of *Civil Disorder Control* and a former adjunct professor at American University, Farmer received a B.S. degree from the London School of Economics and Political Science and an M.A. degree from the University of Toronto. He has completed additional post-graduate work at the Universities of Toronto and London.

This interview was conducted for Law Enforcement News by Dorothy H. Bracey.



David J. Farmer

LEN: Could you describe the organization of the National Institute for Law Enforcement and Criminal Justice?

FARMER: The Institute has several major functions. The first and most important is to undertake research of national significance concerning the various areas of the criminal justice system, concerning the system as a whole and concerning the root causes of crime. The second major function of the Institute is to disseminate the results of research. The organization of the Institute parallels this; a major part is the research offices and another office develops, tests and disseminates the results. In addition to that, there are the specialized offices, such as the Office of Research and Evaluation Methods and the Office of Program Evaluation.

LEN: Is there specialization within the research section?

FARMER: Yes, essentially it is organized on a functional basis. There is an Adjudication Division, a Corrections Division, a Community Crime Prevention Division and, of course, the Police Division. And to conduct basic research of a system-wide or extra-system nature, there is the Center for the Study of Crime Correlates and Criminal Behavior.

You have to approach criminal justice issues from several angles. One is to focus on the components of the criminal justice system and another is to focus on

research and operation.

FARMER: As long as the National Institute is within LEAA, as long as we are part of the same body, surely there should be a close connection. Even if research were separate from the action part, it should still be highly desirable for us to have a coordination of information and activities. Coordination is a thing which is undeniably good.

LEN: There are a number of plans in the air for the reorganization of Federal criminal justice funding. How do those affect the future of the National Institute?

FARMER: As I understand it, I believe that the Attorney General has made a recommendation to the President and I believe that it is now under consideration. I don't think it would be appropriate for me to speculate at this time.

LEN: A lot of the research is being funded through the medium of "Requests for Proposals," in which the National Institute, in effect, outlines a problem and invites agencies to solve it. How do you decide on the

LEN: Once you do get proposals back, what is the process used in selecting the one that will be funded?

FARMER: It's quite a fair process, involving two main steps. The first step is that the applicants are invited to submit concept papers. These are papers of five or six pages in length which outline the purpose and methodology, staff resources and the resumes of people who would be involved in the project. These are reviewed on a competitive basis and we always seek reviews from outside authorities in the research and practitioner communities. On the basis of these reviews, we usually choose three organizations and invite them to submit full proposals. When these come in, the process is repeated again including peer review. Of course, during this process, negotiations about the content and character of the research are carried on. If anybody wants to receive these announcements, all they need do is write in and get on the mailing list, or consult the Federal Register.

LEN: Is there a specific address?

FARMER: The National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, United States Department of Justice, 633 Indiana Avenue, N.W., Washington, DC 20531. They should be addressed to Blair G. Ewing, the director.

LEN: What do you see as the main accomplishment of the National Institute up until now?

FARMER: Talking specifically about the police area, I think that we've made a substantial contribution to carrying the state of knowledge and possibly of practice forward to the point where in the coming years there will probably be substantial changes in the way policing is done.

I must begin by mentioning the study of preventive patrol which was undertaken by the Police Foundation. It casts some doubt on the efficacy of traditional preventive patrol, and suggests that police commanders have much greater discretion in the spatial deployment of resources than is usually supposed. When this study is considered in conjunction with the Institute-supported study on response time — also done by the Kansas City Police Department — the implications are very powerful. What the Kansas City Response Time Study indicates is that there is the need and the opportunity to develop a differential system for police response rather than treating calls for service as if they all deserved emergency response. Rapid police response does not appear to be a critical factor in coping with most incidents. In addition, citizen satisfaction appears to be more a function of citizen expectation than of immediate response.

Another conclusion of the study is that for too long we've neglected the citizen mobilization element of response. We have tended to think of response time as a matter of police with the sirens and lights, arriving in one or two minutes. The fact is that there is not much point in doing that sort of thing if the citizen takes an inordinate amount of time — as they may do in, say, commercial robbery — to report the incident in the first place.

In this operations area I think we have two other studies which were very useful. One is the Rand Study of the Criminal Investigation Process, which sheds more light on the character of investigations and helps to deflate the detective mystique. The most important determinant of whether a case is solved is the information given to the immediately responding patrol officer and in other cases the most important determinant is routine police procedure; these are the types of conclusions discussed in the Rand report. I think that this study has put investigative work in a more realistic light.

These three studies of operations can be viewed alongside other studies like the Institute-supported crime lab proficiency study which shows that there are significant problems in evidence analysis in some crime laboratories in the country. Taking these four studies together would indicate the possibilities of really revolutionizing the effectiveness and efficiency of policing.

The studies I have mentioned have been descriptive and so some people might say that they are negative, of course, in describing we sometimes point out the weaknesses as well as the strengths. In building on these studies, we are undertaking research in different cities which I think

**"We've made a substantial contribution to the point where in the coming years there will probably be substantial changes in the way policing is done."**

the whole thing, as well as on the basic questions concerning the cause of crimes and that related sort of thing.

LEN: Do the specialized components interact at all with the systemic one? Do you talk to each other, in other words?

FARMER: Yes. Of course, praising interaction is like praising motherhood, but we definitely interact with one another on a continuing basis. There has been a great emphasis on this. Coordination is a routine among us that we just take for granted. It really is done.

LEN: How does the National Institute relate to other parts of LEAA?

FARMER: One of the initiatives that [James] Gregg has taken since he has been the LEAA Acting Administrator is the creation of a number of working or coordination groups. For instance, in the police area, we have a working group which operates, I think, very effectively. I am a co-chairman of that working group, along with Jim Golden, who is from the Office of Criminal Justice Programs which handles the major part of the LEAA action funding in the police area. Key personnel involved in funding police meet the first day of each month, and we discuss the sort of direction in which we should be going, and devise recommendations. The purpose is to facilitate overall cohesion in police funding activities in LEAA.

LEN: You obviously see a close relationship between

subject matter for RFPs?

FARMER: We have to recognize that a research organization like this serves two major communities. First, there is the practitioner community. Secondly, we serve the research community.

The first thing which has to be done (and which we have done quite religiously) is to obtain input from both those communities. For instance, in developing the 1978 plan for the Institute, we surveyed approximately 700 people in the research and criminal justice communities. In addition, we held a number of meetings of both practitioners and researchers to give us advice about the general direction in which we should go and about the sorts of things which we should do. In addition to that, of course, one meets representatives of police departments and other organizations at meetings as one goes around the country and people also come here and they give advice.

On the basis of this, we try to develop our priorities and then these receive the approval of the administration. Our program solicitations are developed on the basis of this priority list. But our priority list is only part of the process because you can't rule out the fact that sometimes people do have better ideas than you have yourself and than committees have, and so we do get some proposals which come to us unsolicited. There is a place for these as well.

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# "The criminal justice area is complicated and in the public discussions of LEAA and the National Institute over the past several years much of the dialogue has been simplistic and hasn't gotten down to the facts beyond the words."

Continued from Page 8

will further our knowledge of the corrective action which these descriptive studies suggest is necessary.

There are two ready examples. In Wilmington, the Institute funded a study of split force patrol. The idea of this was to divide the patrol service into two parts, one part responsible only for responding to calls for service and the other part doing nothing but preventive patrol. In this way one can isolate preventive patrol and investigate the phenomenon. Also, Wilmington is working on the question of managing the public's demand for police services. Police work does come in peaks and if management can delay the response to some of the peaks, a police department can have a significant impact on manpower needs and manpower usage. In other words, police management can use its resources for more productive things.

At the same time, the Birmingham Police Department under Chief James Parsons, in conjunction with the Police Executive Research Forum, is undertaking a study that is looking at the whole question of differential police responses in order to develop the range of options and what can be done in a practical setting. I think all these research activities taken together provide a significant opportunity for improving policing and I think that has been a significant accomplishment.

Another major arm of our research work in the police area is with management. Here one of our major efforts — taking a look at police program performance measurement — is still ongoing and so results are not yet available. Among the factors limiting the opportunity for police effectiveness is the fact that we don't have a sound system for measuring police program performance; the system we have has significant problems and actually leads to some distortion of activity. And so I think it is very important to develop productivity, efficiency and effectiveness measures as means of making police programs and commanders accountable.

LEN: Do you see it as an important part of the National Institute's policy to build upon previous studies?

FARMER: I think so; it is very important. Just let me add a thought about the earlier question about what the Institute has done. The criminal justice area is complicated and in the public discussions of LEAA and the National Institute over the past several years much of the dialogue has been simplistic and hasn't gotten down to the facts beyond the words. For illustration, we probably have right now in the police research area maybe 30 projects being undertaken; assessing the results of the projects cannot be undertaken without serious thought and time. In research some projects encounter problems — that is the nature of research, to encounter hazards. But most of the Institute projects are strong and some are like the ones I mentioned: very, very powerful. So it is impossible to assess the record of the Institute or LEAA without looking at the details. Unfortunately, this is very tiresome and most people just don't get around to it.

LEN: How do you see the evolution of change in policing in the recent past?

FARMER: What has happened in the police areas for the past 15 years has been very exciting. If you think back to the 1960 presidential election, crime was not a national issue; crime was essentially a question for states and localities. We have had a tremendous revolution in the police business since then, with the coming of the Great Society and the creation of LEAA, and the establishment of crime and law enforcement as a national issue. Of course, there were studies of policing before 1968, but they can be characterized as sporadic and quite isolated. Since 1968 there has been a revolution in police research and we now have significant studies. We're not starting from ground zero any more; we are building a significant body of knowledge. Some of it is counterintuitive, like the response time study, some of it is confirming and amplifying what some of us knew before, but we do have a body of knowledge which is rapidly developing.

It is like the beginning of any subject or any science. If you think of the history of psychology, for example, in the beginning it was primitive and a question of filling in large gaps; we are now in that situation with police science. Police science is still an ad hoc sort of infant, but it is no longer embryonic, no longer just a collection of opinions. We are moving forward with the opportunity

to build on what has happened before. One of the problems, by the way, in police research is that we have a wide range in the quality of researchers. We have excellent researchers, just like we have excellent practitioners; we also have pedestrian ones and we have terrible ones. We have some researchers who don't know that the brain is not in the foot. But that is just a normal growing-up problem and I think that the most important thing that has happened in policing in the past 15 years is that police science is on the move and I think this is due partly to the role of the Federal government.

LEN: It has been suggested the recent academic interest in criminal justice as opposed to the older interest in criminology is largely due to the availability of LEAA funds for research. What's your reaction to that?

FARMER: Naturally, people do tend to follow the money. If money were available to study Egyptology, people would study Egyptology. If it changes to Syriology, then they'll study that. I think it is very important that the sort of people who work in the Federal government be sensitive to all the different issues and that we identify carefully what national priorities are, and involve both researchers and practitioners (as we do) in the process of setting those priorities.

By the way though, I wonder if that question means, "Has there been a neglect of basic research?" I think there have been significant studies undertaken in the area of basic research; certainly there has been a focus on this at the Institute. This is reflected in the Institute's establishment about six or seven months ago of a Center for the Study of Crime Correlates and Criminal Behavior. It doesn't mean such basic work wasn't done before, but our intention was to emphasize it more. Another

people who are doing the projects with skills on the advisory board to compensate for any deficiencies. If you have essentially a research type of organization, you try and compensate on the advisory board with practitioners. If you have a police department, you try stacking the advisory board with skills which may be lacking in the police department. The fact of having prominent people on the advisory board also helps in the dissemination process because people are already thinking and talking about it. When the study comes to the end, we do more than just disseminate the report. Funds are always limited, but the Institute does have an extensive program of training. For example, the Institute has done so in the areas of patrol and criminal investigation, and is now planning to conduct a training program in the area of anti-corruption management.

LEN: One of the criticisms that's often made of academic research, even research which is very high in quality, is that it sits between the covers of obscure journals where the practitioner is not likely to find it. Are you making an effort to solve that problem?

FARMER: Most definitely. There is a very active program to do that in such terms as training programs, publication activities and also in the way that our studies are conducted. I personally take the view that we have to get research results widely disseminated and in practice. But I want to say two things, and it's easy to misunderstand them. I think this is a view of James Q. Wilson, as Pat Murphy reports it to me. The fact of adding to the store of knowledge which researchers can draw on for other research does have a certain value. It's a limited value, and it doesn't justify itself, but I don't think these things are as wasted as we sometimes think.

## "In police research we have a wide range in the quality of researchers. We have excellent researchers. We also have pedestrian ones and we have terrible ones."

factor is that with police research, as in the other areas just coming under serious study, there is a natural tendency to begin by describing what exists. Because the criminal justice system is so visible and its problems so apparent, there is some use in latching on to this and analyzing it.

LEN: The National Institute closely monitors its research as the projects are going on, but what about final evaluation? You mentioned the Rand detective study, which has been sharply criticized by some practitioners in the field. Did you feel then that it was your duty to respond to those criticisms in any way or were you simply presenting it to be accepted or rejected as individuals desire?

FARMER: Our position on the Rand detective study is that we fund research which will be of significance to the police community, both researchers and practitioners. The criminal investigation area is a very, very important one and absorbs about 10-12 percent of the resources of most police departments. As such, it should be exposed to analysis. What we did was to hire a very reputable research organization and we insured that they worked hand in glove with the practitioners. I think they shed some light on the function.

We neither condemn nor endorse the results of our research studies. What we insist on is that the researchers be honest and helpful and that they have practical goals in terms of being helpful to society. In fact, when the Institute published the detective study, it included a detailed critique of the research, and the researchers' response. I think that a helpful discussion did follow publication of the Rand Report and I think it has helped police administrators. Naturally, some people misinterpret results, but that is always a problem. Again, look at Freud. How much of what he said was misinterpreted? Is that any reason for abolishing Freud? Having said this, let me add that the research results of the study on the criminal investigation process seem clearly credible.

LEN: Anyone who has any connection within law enforcement does get a lot of mail from LEAA. Is it an effective way of disseminating information?

FARMER: The question of dissemination is important and we try to address this issue from the very beginning. Whenever we initiate a study, we always take great care to establish an advisory board for the study, balancing the

The second thing is that research is not instantly transferable into practical programs. For instance, if one takes the studies which examine an existing practice, the research findings can be very, very important, but the findings are frequently disjointed items of information with various degrees of probability, and it is very difficult for the practitioner who turns around and says "What should I do?" There is another stage which is needed, which is to take research and to develop models for activities. The Institute has tried to do this through the Office of Development, Testing and Dissemination. Research does not typically provide instantly-implementable results.

LEN: You fund little in the field of historical or comparative studies. Does this indicate a feeling that the American police have little to learn from the past or from the experiences of other nations?

FARMER: Absolutely not. I think that if we look at the police studies undertaken in this country we do tend to be very parochial. In part this reflects the fact that the whole area of police operations is often parochial, in that the typical police chief of city A is usually not much interested in city B. The parochialism of American police is reflected in our research and many research activities are focused only on our own problems. But of course it's so clear that we have a great deal to learn from the experiences in other nations. It's not that they are in any way better; it's just that looking at different approaches can shed light on our own problems.

A leading proponent of the value of comparative police research has been Pat Murphy, and he has taken significant steps in this regard, such as bringing people like Sir Robert Mark and others from England to visit here. I also think that John Jay College of Criminal Justice has done a good deal of work in this area.

We in the police research area are also trying to respond to this. One of the things that we can now do in police research, because we have advanced to a stage where we do have a growing body of knowledge, is that more and more we should synthesize the results of what we have. I want to give an example that I think is important. The Response Time Study by itself is tremen-

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# Interview: NILECJ Police Division head David Farmer

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dously significant. The Criminal Investigation Study by itself is also tremendously useful; so are the Preventive Patrol and the Crime Laboratory Proficiency studies. But how about if we take all four together and compare the conclusions? Taking the four together, the whole does seem greater than the sum of the parts. One of the things we are in the process of doing now is funding research which would synthesize activities in different sub-areas and we are hoping to do this first in the field operations areas, and when we do this we will definitely include consideration of practices abroad. There are some useful things going on in the area of comparative police studies but I think we can do a lot more. By the way, this is not just a problem for research but also a problem for many teaching institutions. If we look at the criminal justice programs in many universities, we find that many still don't teach comparative police administration or comparative police practices, and if they do, it's generally limited to one or two courses.

**LEN:** How does police research compare to that in other areas of criminal justice?

**FARMER:** I think we can take a great deal of pride in the police community that our research has advanced to the state that it has. We can have particular satisfaction when we look at the courts, corrections and the other elements of the criminal justice system. As a police community we have made significant strides, and in research we have been the pioneers into the criminal justice area. But of course, this has also led to some problems. I think we really have to admire the police chiefs that do let research-

ers into their departments because doing things for the best reasons can sometimes lead to embarrassment. There are problems and many chiefs deserve medals for their courage in supporting research activity.

**LEN:** Approximately half of all American police departments have fewer than a dozen sworn officers. Yet it seems that most National Institute police funding involves larger, urban departments. Is that deliberate? Is it useful?

**FARMER:** At one time, I was a part-time commissioner of a very small police department in Illinois where we had five police officers. It was a remarkable experience, and it has led to a strong interest in small town policing. I also worked for a large department — the New York City Police Department — and so I am conscious of the needs of both. Nevertheless, there is a definite inclination in police research activity to work with the larger centers and I believe that this is very legitimate. I don't think we can neglect the small police departments, and I don't think we can neglect the rural areas, but I do think we have to focus on the problems of the large urban areas because that's where the crime problem is and that's where the law enforcement problem is. I think it's a very arguable position that the police departments in the very large centers (with the mass of problems) have to have a different kind of organization in some ways from the small police department. Their problems are overwhelming and we have to solve our problems where they lie. If we can solve the problem in the larger centers, then there will be a spillover benefit to the small areas.

If one had two diseases, cancer of the foot and

boil on the back of the neck, one would treat the cancer of the foot as first priority and treat the boil on the neck as a secondary priority. The problems we have are in the large urban centers and that's where we should address the problems. If we solve them, we can then do more in other areas.

I do not wish to be misunderstood. LEAA can point to all kinds of programs that are helping the non-urban areas. But the major thrust should be the larger centers, in my view.

**LEN:** What is the rationale for direct Federal funding of research? Can Washington be responsive to the research needs of all parts of the country?

**FARMER:** Research is a flower that should be encouraged from many quarters and this does happen. Research should be sponsored at different levels, individual, local, state and national. But having said that, I think there is a place in the U.S. for looking at criminal justice problems on a nationwide basis. The problems that are experienced in one area do have a large relationship to similar problems in the others. There are common national problems, and, because of this, it is desirable for the national government to sponsor research of national significance. Beyond this, there is no other entity willing to appropriate adequate funds. It is clear when one sees the alternative: if the national government doesn't sponsor research, who should? Who can? I don't know why response time should be studied by different entities, for example; it is a nationwide police issue.

**LEN:** Do you, either by formal or informal methods, have any kind of awareness of whether the police administrators are actually making use of the results of National Institute's studies?

**FARMER:** It would be nice if we had a formal management information system with figures that I could show you. However, there is no such system, even if it were possible to develop one, so my reply must tend to be impressionistic. We go get a lot of feedback from people who communicate with us. My impression is that the more important studies are having a profound effect on police operations. The detective study has had a profound effect on many police departments in the country, for example, and I hear people talking about the preventive patrol study. In groups of police chiefs there has been intense interest in research like the response time study and the crime laboratory proficiency study.

**LEN:** Can you summarize the major thrusts of Institute research activity in the past and during the future?

**FARMER:** The Institute has identified ten long-term research priorities. One of these is to deepen understanding that will lead to the improved "allocation and deployment of police resources."

Within this context, and with this goal in mind, the Institute will focus on three major aspects of the allocation problem. The first is to provide helpful information on police operations. The second is to provide information on police management, and the third is to provide information on the role of law enforcement in society and within the criminal justice system. Under the heading of police operation are studies such as those on Split Force Patrol in the City of Wilmington, the Rand Study of the criminal investigation process and the Response Time Study. Under police management, examples include the Anti-Corruption Study, the study of police referral systems, research on the impact of civil service on police management and, most importantly, research on police program performance measurement. Examples of studies in the third category are those on the role of police agencies, and police-prosecutor relations.

During the coming years, we should continue research activity on the Institute's long-term priority in the three areas of police operations, police management and police relationships with other elements of society. In doing so, we should attempt to synthesize the results achieved to date, and to give meaning to the research successes already achieved. We should also be prepared to continue to take risks, because research is necessarily risky. In any research endeavor, one only hopes to grasp the brass ring every time — but one does not expect it. Some research results are less than helpful; other results, such as the response time conclusions, are very useful. To obtain the best, we must continue to risk funding difficult questions. We must continue to accept the difficulties and the consequences of addressing longer-range and more fundamental issues. We must not sacrifice the long-term for the short-term quickie payoffs.

## Criminal justice job opportunities

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# CRIMINAL JUSTICE LIBRARY

## Legal perspectives on confessions to private parties

By EVA LEE HOMER

From its origin in 1966, the *Miranda* ruling has been viewed by many police personnel and large segments of the general population as the death knell for confessions as admissible evidence.

*Miranda v. Arizona*<sup>1</sup> established firmly

### LEGAL NOTES

and rather clearly that a person taken into custody or otherwise deprived of his liberty by officers of the law must be given notice that he/she has the right to remain silent, the right to have an attorney present during questioning, and that anything he says may be used against him. In other words, the Supreme Court wished to be sure that no person would be forced, coerced, intimidated, cajoled or bribed into incriminating himself to police agents without knowing what he was doing.

The constitutional concepts enumerated in *Miranda* fall within the scope of the Fifth Amendment's proscription against self-incrimination, and the concept of voluntariness, which come under the due process clause of the 14th Amendment<sup>2</sup>.

In *Miranda*, the Supreme Court was quite clear. Chief Justice Warren, in delivering the opinion of the Court, first referred back to *Escobedo v. Illinois* stating that "no person . . . shall be compelled in any criminal case to be a witness against himself. . . the accused shall . . . have the Assistance of Counsel."<sup>3</sup> Warren emphasized that these "rights. . . were put in jeopardy in that case through official overbearing."<sup>4</sup> The Court also held that the premise was not a new one, but "an application of principles long recognized and applied in other settings."<sup>5</sup>

Apparently, the Supreme Court felt very strongly about this matter because it was unusually specific in parts of the opinion. Instead of avoiding issues by use of idealistic but vague rhetoric as it often does, the Court detailed specific defini-

tions and guidelines. It held:

"The prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation or the defendant unless it demonstrates the procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way . . . Prior to any questioning, the person must be warned that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult an attorney before speaking, there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. . . ."<sup>6</sup>

Chief Justice Warren continued, stating "The constitutional issue. . . is the admissibility of statements obtained from a defendant questioned while in custody or otherwise deprived of his freedom of action in any significant way."<sup>7</sup> Warren then referred specifically to "incommunicado interrogation" in "police dominated atmosphere" which brings about "self incriminating statements without full warning of constitutional rights."

The *Miranda* decision has been applauded by liberals and vilified by staunch "law and order" advocates, but most U.S. citizens are now aware of restraints placed on police by the historic ruling.

How do these rules affect others concerned with crime and justice? How do the courts view confessions to others, to "pri-

ivate parties"?

John J. Burke, a special agent of the FBI, stated in a 1973 article that the standard for admissibility of a confession is generally held to be voluntariness, regardless of whether the statements were made to a completely private party or to a "person in authority."<sup>8</sup> Both McComuck<sup>9</sup> and Wigmore<sup>10</sup> support this view.

Few people would have difficulty with the concept that fully voluntary confes-

sions made to completely private parties are fine and dandy. If a man wants to tell his neighbor that he has committed a criminal act and the neighbor decides to testify to it, it would certainly seem voluntary all the way around. However, since most situations are far less clear cut, there are some pertinent questions which must be raised.

One germane question is What is vol-  
Continued on Page 13

## The Signs of Crime A Field Manual for Police

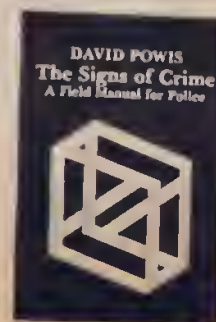
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## New books on review

*Police Revitalization*. By Gerald E. Caiden. Lexington Books. 1977. pp. 383.

Revitalization implies the restoration of the capacity to develop, and as such there is no more germane issue confronting American law enforcement agencies. Caiden's book is a compelling analysis of the incomplete transmutation presently realized by the police.

Caiden recounts the institutional crisis of confidence, endemic to American society in the 60's, from which came the public furor which receptive police officials interpreted as a mandate for change. Institutional change for the police has been accommodated by resources provided through public and private agencies, most notably LEAA and the Police Foundation. Research, made possible through agency grants, has shaken many of the basic tenets of policing such as the value of patrol, the

detective function and the military model.

While research has provided a mixed bag of results, its salient feature has been recognition of the fact that the current state of the art is not the best of all possible worlds. Caiden notes that many police organizations reluctantly accepted research functions only because they were facilitated through agency grants, or because the grants were contingent upon a research capability.

The situation now is such that grant futures are uncertain. The Police Foundation has appropriated the majority of its resources and the LEAA budget is being revised downward. Police revitalization, manifested in progressive administration cognizant of the value of research and tolerant of police change agents, is in jeopardy. Police experimentation has been

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# Analysis: the case law of confessions to private parties

Continued from Page 11

untary? There are at least three methods which the courts have used to determine voluntariness.

- Under the "New York rule," now discredited, the trial judge could exclude the confession only "if in no circumstances could the confession be deemed voluntary."

- Under the "orthodox rule," the trial judge decides alone on the voluntariness of a confession; the jury can only consider its truthfulness.

- Under the "Massachusetts rule," the judge decides if the confession was voluntary enough to be admitted and therefore presented to the jury. The jury can then consider the voluntariness as well as the truthfulness.<sup>11</sup>

In 1968, the "orthodox rule" was approved for use in the Federal courts. It should be noted, however, that the U.S. Supreme Court has never really made a decision about whether a "voluntariness" hearing must be conducted without the presence of the trial jury.

There is another point which should be kept in mind concerning voluntariness. The prosecution needs to prove voluntariness only by a "preponderance of the evidence." In *Lego v. Twomey*<sup>12</sup>, "the court held that proof beyond a reasonable doubt is not required; proof of voluntariness by a 'preponderance of the evidence' is sufficient."<sup>13</sup>

As Burke and Wigmore point out, a confession is not held admissible when it is obtained by physical force or by a threat of physical harm which the person believes can be carried out. This concept has been accepted for so long a time, Burke notes, that a constitutional ruling is not necessary to make involuntary confessions inadmissible. However, one cannot be so naive as to allow oneself to believe that, in practice, physical harm and threats have not been tried as means of eliciting confessions. Chief Justice Warren, in writing the Miranda decision, cited *People v. Portelli*, a 1965 New York case<sup>14</sup>, wherein a potential witness was beaten and tortured to get a statement incriminating a third party. It was doubtless of little satisfaction to the man who was beaten and tortured that the courts would not admit the statements obtained from him into evidence.

Another germane question we must consider is: Who is a "private person" and who is a "person in authority?" In 1897, in *Bram v. United States*, the Supreme Court showed "some reservation concerning the status of confessions prompted by private persons."<sup>15</sup> It seems that the term "persons in authority" has not been clearly defined. There are two prevalent views, however. The narrower view holds that "persons in authority" are those identified with governmental action, such as police officers and their superiors, prosecuting attorneys and their assistants, magistrates and other governmental personnel directly concerned with prosecuting the accused. "Persons in authority" has also been interpreted more broadly to include "those who are involved in some manner with the apprehension, prosecution or examination of the accused. . . generally. . . viewed as persons with the aura of officialdom. . . have no governmental identity; persons who would normally be called private parties."<sup>16</sup>

Within this broader definition, some surprising people have been held to be "persons in authority" by the courts, including the injured party, victim of the crime<sup>17</sup> and prosecution witnesses.<sup>18</sup> A person's

employer has long been held to be a "person in authority," even when he is not directly harmed or in any way concerned with the crime.<sup>19</sup>

For a long time, the law sought to solve two matters at the same time that of who qualifies as a "person in authority" as well as that of the "voluntariness" of the confession. Prior to Miranda, it seemed the matters had been neatly wrapped up in precedence.

In general, if there were any promises or inducements held out or offered, however slight or small they might be, by anyone directly connected with the case or by anyone the accused considered to be a person in authority, the confession was *not* considered voluntary. For example, as far back as 1899, in *Sullivan v. State*, the Supreme Court of Arkansas ruled that the owner of stolen property was really the prosecutor of the case and was therefore a person in authority.<sup>20</sup> In 1966, in *Agee v. State*, the Supreme Court of Mississippi held that a confession made to a former teacher who told the defendant that "it would be lighter on him if he'd tell the truth"<sup>21</sup> was not voluntary. In 1964, in *Fisher v. State*, the Court of Criminal Appeals ruled that "a confession elicited as the result of an employer-minister's promise not to press charges for a theft rendered it involuntary."<sup>22</sup>

It begins to look like *all* confessions are being called involuntary. But then along comes Miranda, the ruling everyone thought would put an end to the use of confessions as evidence forever.

Miranda is specific. It sets up stringent standards for interrogation by law enforcement officers. As related by Burke, the Miranda rule must be utilized when there are three conditions present: "custody plus interrogation plus a law enforcement interrogator."<sup>23</sup> While the courts have had some problem in defining "custody" and "interrogation," they have "found little difficulty in deciding who is *not* a law enforcement officer."<sup>24</sup>

Most private security police are *not* law enforcement officers, the courts have held. They may interrogate without Miranda warnings as long as they do not hold out "inducements" to confess.

According to the Wharton, "A mere adjuration to speak the truth does not in itself render a confession involuntary." In fact, the following statements to those accused of crimes were considered acceptable:

"Now remember, if you know the parties you had better tell me. I would not suffer for anyone else";

"We have got you this time. We have traced you around until we are satisfied you have got the cow";

"I am satisfied that there are other receivers whom we have not discovered. I should like to have you make a clean breast of it";

"It is no use for you to deny the crime";

"Get right and tell us what you know about this case."

It should be remembered, however, that "an adjuration accompanied by a threat. . . will render a subsequent confession involuntary," as in this example: "If you do not tell all you know about the business you will be put in a dark room and hanged."<sup>25</sup>

Examples of admissible interrogations and confessions abound, however.

- In 1967, in *People v. Williams*, in Syracuse, New York, the municipal court held that a department store's private security guard, who arrested the defendant for

stealing merchandise, did not have to give a Miranda warning. It further upheld the right of the security guard to take the defendant to a basement office, question her and ask the defendant to write out a statement of guilt. The statement was held admissible.<sup>26</sup>

- In *State v. Hess* (1969), the Court of Appeals of Arizona held that it was acceptable for two store detectives to have questioned a defendant for three hours and administered lie detector tests to the defendant, without Miranda warnings.<sup>27</sup>

- In *People v. Frank* in 1966 the Supreme Court of New York held that the detention and interrogation of a store employee suspected of shoplifting, by private security guards employed by the store, was permissible in the absence of the advice of rights.<sup>28</sup>

- The Supreme Court of Washington, in 1969, admitted damaging statements made by the defendant to a store's owner and other employees. The owner had apprehended the defendant as he attempted to leave the store with stolen merchandise, and the defendant was then taken to an office and questioned by the owner and other employees, without the Miranda warnings.<sup>29</sup>

- In *People v. Cheatum* (1968), the California Court of Appeals allowed the testimony of a 70-year-old retiree who had caught a suspected burglar and obtained a confession. The court ruled that Miranda warnings did not apply to non-law enforcement officers.<sup>30</sup>

Note the change from the turn of the century decisions. Particularly in the last two decisions, cited above, it can be seen where the courts might have held that the "interrogators" were "people in authority" by dint of their being the crime victims. Some might also see uniformed department store guards and security personnel as having a strong aura of "persons in authority."

However, the courts have been rigorous where there has been any "taint" of involvement by law enforcement officers. In *State v. Kelly* (1969), the Supreme Court of Missouri decided that a statement by the accused to his robbery victim, in the presence of a police officer, should not have been admitted as the accused had previously indicated he wanted to remain silent to the police officer. The court said it was an extension of the police officer's interrogation and required Miranda.<sup>31</sup>

In 1968 the Supreme Court of Pennsylvania held that statements made by an accused to his parents, while in police custody, should not have been admissible without Miranda warnings because the police were using the parents as an "instrumentality" in their interrogation.<sup>32</sup> In *Pratt v. State* (1970), the Court of Special Appeals of Maryland decided that a security guard employed by a department store, but commissioned by the Governor under a state statute *was* a law enforcement officer within the meaning of Miranda, because the security officer was "responsible to the state for the proper discharge of his duty

Continued on Page 14

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# Legal notes: in re confessions made to private parties

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and not to the company. . . 33

It seems that in tightening the "rules for interrogation by law enforcement officers with the milestone Miranda decision, the Supreme Court effectively loosened the constraints relative to private citizens by delineating who is and is not an officer of the law. The concept of "persons in authority" appears to have been materially changed and so, to an extent, has voluntariness. In the Miranda decision, the Supreme Court was emphatic about psychological coercion being equivalent to physical coercion. Some might claim that the situation in the security office of a company or department store could be viewed as "custodial interrogation," not too dissimilar from the kind which goes on in police stations. Some security guards are trained and skilled in questioning techniques similar to those employed by police. Are confessions obtained in a secluded setting by trained personnel who have the authority and ability to detain and question, for unspecified time periods, any different qualitatively from those obtained by police officers prior to Miranda? Yet, confessions to security guards are held to be confessions to "private persons." It would seem that with the Miranda decision the Supreme Court has, in effect, "taken away" with one hand an "given out" with the other.

## Citations

- (1) *Miranda v. Arizona* 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 694 (1966)
- (2) *Wharton's Criminal Evidence*, Vol. 3 § 672, Procedure to Determine Voluntariness (13th ed., Chas. E. Torcia,

Lawyers Cooperative Publishing Co., Rochester, N.Y. 1973)

- (3) *Escobedo v. Illinois* 378 U.S. 478, 84 S. Ct. 1758, 12 L. Ed. 2d 977, (1964)
- (4) *Miranda v. Arizona* 86 S. Ct. 1603
- (5) *Ibid.*
- (6) *Miranda v. Arizona* 86 S. Ct. 1604
- (7) *Ibid.*
- (8) Burke, John J. "Confessions to Private Persons" *F.B.I. Law Enforcement Bulletin*, Aug. 1973
- (9) McCormick, *Evidence* § 162 (2d Ed. 1972)
- (10) Wigmore, *Evidence* § 830 (Chadbourn Revision, 1970)
- (11) Wharton's *Criminal Evidence*, vol. 3, § 672, 13th ed. 1973
- (12) *Lego v. Twomey* 404 U.S. 477, 30 L. Ed. 2d 618, 92 S. Ct. 619
- (13) Wharton, Vol. 3, 673 (footnote 86)
- (14) *People v. Portelli* 15 NY 2d 235, 205 N.E. 2d 857, 257 NYS 2d 931
- (15) 168 U.S. 532
- (16) Burke, p. 10
- (17) *Sullivan v. State*, 66 Ark. 506, 51 SW 828 (1899)
- Hanus v. State*, 104 Tex. Cr. 543, 286 SW 218 (1926)
- (18) *State v. Foster*, 25 N.M. 361, 183 P 397 (1919)
- (19) *Hamilton v. State*, 77 Miss. 675, 27 So. 606 (1900)
- Hooper v. State*, 81 Ala. 51, 1 So. 574 (1887)
- (20) Burke, p. 10
- (21) *Ibid.*
- (22) *Ibid.*
- (23) *State v. Bolan* 27 Ohio St. 2d 15, 271 NE 2d 839 (1971)
- State v. Kelly* 113 N.J. Super 169,

273A 2d 371 (1971)

- (24) Burke, p. 11
- (25) Wharton, vol. 3, pp. 452-53
- (26) *People v. Williams* 53 Misc. 2d 1086, 281 NYS 2d 251 (Syracuse City Ct. 1977)
- (27) *State v. Hess* 9 Ariz. App. 29, 449 P 2d 46 (1969)
- (28) *People v. Frank*, 52 Misc. 2d 266, 275 NYS 2d 570 (Sup. Ct. NY 1966)

- (29) *State v. Valpredo* 75 Wash. 2d 368, 450 P. 2d 979 (1969)
- (30) *People v. Cheatum* 263 Cal. App. 2d 468, 69 Cal. Rptr. 679 (1968)
- (31) *State v. Kelly* 439 SW 2d 487 (Sup. Ct. Mo. 1969)
- (32) *Commonwealth v. Bordner* 247 A 2d 617 (Sup. Ct. Pa. 1968)
- (33) *Pratt v. State* 9 Md. App. 220, A 2d 247 (1970)

## Calif. crime figures profiled

Continued from Page 7

content of the report, some observers expressed skepticism about the location and timing of its release. Younger announced the findings of the commission in Los Angeles, the home of his main opponent for the Republican gubernatorial nomination, former L.A. police chief Edward M. Davis.

With the June primary election less than a month away, Davis has managed to reduce Younger's once commanding lead for the nomination, evidently on the strength of his law and order background. Meanwhile, the *New York Times* indicated that Younger is "apparently attempting to reassert his own role as a tough law enforcement official" by highlighting the work of the crime panel.

Whatever the motivation behind its existence, the commission made two recommendations designed to curb what it sees as the proliferation of organized crime in California. The first would permit the state's law enforcement agencies to use electronic surveillance, while the second

would empower a state grand jury to cope with the problem.

## LEAA issues prison, probation & parole censuses

Continued from Page 3

palities were the main funding source for 2 percent of the agencies.

According to the report's population analysis, there were 680 adults and juveniles under probation or parole supervision for every 100,000 residents on September 1, 1976. The District of Columbia had the highest rate in this area with 1,366 clients per 100,000 population, followed by Massachusetts with 1,353, California with 1,114 and Maryland with 1,018.

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# Upcoming Events

**June 18, 1978.** Officer Survival Course. Presented by the California Specialized Training Institute. For further details, contact: California Specialized Training Institute, Building 904, Camp San Luis Obispo, CA 93406. Telephone: (805) 544-7101.

**June 18-21, 1978.** The 1978 National Institute on Crime and Delinquency. To be held at the Americana Hotel in Miami. The institute will be held in conjunction with the Southern State Correctional Association. Contact: Betty McCarth, 1311 Wine-wood Blvd. Tallahassee, FL 32301.

**June 18-21, 1978.** The 1978 Annual National Conference of the National Association of Criminal Justice Planners. To be held at the Hilton Gateway in Newark, New Jersey. Fee: \$60. For further information, contact: Janice Zalen Stiers, The National Association of Criminal Justice Planners, 1012 14th Street, N.W., Washington, D.C. 20005. Telephone: (202) 347-2291.

**June 18-22, 1978.** Police Public Information Workshop. Presented by the National Association of Public Safety Information Officers. To be held at the Red Carpet Inn, Houston. Tuition: \$65. For more information contact: NAPSIO Police Public Information Workshop, Mr. Rick Hartley, Public Information Office, Houston Police Department, Houston, Texas 77002.

**June 19-21, 1978.** Seminar on Handling Hazardous Materials & Transportation Emergencies. Presented by the National Fire Prevention Association. To be held in Seattle. For further information, contact: James V. McKiernan, National Fire Protection Association, 470 Atlantic Ave., Boston, MA 02210.

**June 19-21, 1978.** Effectiveness Training Workshop. Sponsored by the Training and Development Division of Correctional Service of Minnesota. To be held in Minneapolis. Fee: \$175. For further information, contact: Christopher C. Huck, Director, Training and Development Division, Correctional Service of Minnesota, 1427 Washington Avenue So. Minneapolis, MN 55454. Telephone: (612) 339-7227.

**June 19-23, 1978.** Course: Analytical Investigation Method. To be held in Dallas, Texas by Anacapa Sciences, Inc. For more details, contact: Anacapa Sciences, Inc. P.O. Box Drawer Q, 1528 Chapala St. Santa Barbara, CA 93102.

**June 19-23, 1978.** Sixth Annual Institute on the Physical Significance of Bloodstain Evidence. Presented by Elmira College in Elmira, New York. Three credit hours are granted for successful completion of the institute. Cost: \$220 for graduates, \$142 for undergraduates. For more information write or call: Professor Herbert Leon MacDonnell, Bloodstain Evidence Institute, Elmira College, P.O. Box 1111, Corning, NY 14830. Telephone: (607) 962-6581.

**June 19-23, 1978.** Institute on Science in Law Enforcement. Presented by the Center for Criminal Justice at Case Western Reserve University. Tuition: \$135. For further information, contact: Center for Criminal Justice, School of Law, Case Western Reserve University, Cleveland, OH 44106.

**June 19-28, 1978.** Survey Research in Criminal Justice Course. Presented by the Modesto Regional Criminal Justice Train-

ing Center. Fee: \$330. For further information, contact: Jack MacArthur, Director, Modesto Regional Criminal Justice Center, P.O. Box 4065, Modesto, CA 95352. Telephone: (209) 526-2000.

**June 19-30, 1978.** Internal Affairs Program. Presented by The Southern Police Institute. Fee: \$350. For more details, contact: Seminar Coordinator, Southern Police Institute, School of Police Administration, University of Louisville, Louisville, KY 40208. Telephone: (502) 588-6561.

**June 25-28, 1978.** Course: Curriculum Development for Instructors/Trainers. To be held in San Francisco. Conducted by the Delinquency Control Institute. Tuition \$150 (\$236 for academic credit) and includes cost of materials and certification. For information and registration, write or call: Ms. Betty Ferniz, Delinquency Control Institute, Tyler Building, 3601 S. Flower Street, Los Angeles, CA 90007. Telephone: (213) 741-2497.

**June 25-28, 1978.** Working Seminar: Public Relations with Dogs. Conducted by the North American Police Work Dog Association. To be held in Springfield, Missouri. Fee: \$35 for members and \$50 for non-members. For further information write or call: Dick Warner, Rt. 1, Box 133, Strafford, MO 65757. Telephone: 1-417-736-3060.

**June 29, 1978.** Juvenile Delinquency Course. To be held at the Pine Manor College, Brookline, Massachusetts, by the Massachusetts Criminal Justice Training Council. For further information, contact: Marie Archie, Massachusetts Criminal Justice Training Council, One Ashburton Place, Boston MA 02108. Telephone: (617) 727-2257.

**July 1978.** Three-day course. Symposium on Computers in Law Enforcement. Presented by the Criminal Justice Research Foundation. For additional information, write or call: Dr. Bruce T. Olson, President, Criminal Justice Research Foundation, 2775 Cottage Way, Suite 29, Sacramento, CA 95825. Telephone: (916) 488-4757.

**July 9-14, 1978.** Anti-Terrorism Seminars. Presented by the Texas Department of Public Safety. To be held at the Homer Garrison Jr. Memorial Law Enforcement Academy in Austin, Texas. For further information contact: Thomas W. Pfluger, Training Officer, Law Enforcement Academy Texas Department of Public Safety, 5805 North Lamar, P.O. Box 4087, Austin, TX 78773. Telephone: (512) 422-0331, ext. 492.

**July 9-28, 1978.** Career Prosecutor Course. To be held in Houston by the National College of District Attorneys. For further information and registration, contact: Registrar, National College of District Attorneys, College Law, University of Houston, Houston TX 77004.

**July 10-13 1978.** Police Physical Fitness Trainer's Course. Presented by the Institute

for Aerobics Research. To be held in Dallas. Tuition: \$250, which includes all educational materials. For more details contact: Larry R. Cettman, Institute for Aerobics Research, 11811 Preston Rd., Dallas, TX 75230. Telephone: (214) 661-3374.

**July 10-14, 1978.** Advanced Techniques in Crime Analysis Workshop. Presented by the Theorem Institute. To be held in Redondo Beach, California. Fee: \$495. For further information, contact: Michael O'Neil, Vice President, Theorem Institute, 1737 North First Street, Suite 390, San Jose, CA 95112. Telephone: (800) 538-6896 outside California, or (408) 294-1427 in-state.

**July 11-19, 1978.** Fifth Institute on Drugs, Crime and Justice in England. Presented by the American University of Washington D.C. Cost: \$835, including a single study-bedroom, breakfast, tuition, and seminar social events. Air travel and ground transport are not included in the Institute fee. For further information, write: Dr. Arnold S. Loebach, Director, Institute on Drugs, Crime and Justice in England, Center for the Administration of Justice, The American University, Washington, D.C. 20016. Telephone: (202) 686-2405.

**July 13-16, 1978.** Law Enforcement Hypnosis Seminar. To be held in Los Angeles by the Law Enforcement Hypnosis Institute, Inc. For additional details, contact: Dr. Martin Reiser, Director, Law Enforcement Hypnosis Institute, Inc. 303 Cretna Green Way, Los Angeles, CA 90049. Telephone: (213) 476-6024.

**July 17-21, 1978.** Advanced Firearms Course. Presented by the Smith & Wesson Academy. For more information, contact: Director, Smith & Wesson Academy, Springfield, MA 01101.

**July 19, 1978.** State and Direction of Corrections and the Future of Corrections Seminar. For more information, write: The University of Sydney, Institute of Criminology, 173-175 Phillip St., Sydney, N.S.W. 2000, Australia.

**July 24-28, 1978.** Police Corruption Issues. Presented by the International Association of Chiefs of Police. To be held in Detroit. Tuition \$300. For complete course information and registration forms, write: IACP, 11 Firstfield Road, Gaithersburg, MD 20760. Telephone: (301) 948-0922, ext. 208.

**July 24-August 4, 1978.** Two-week Law Enforcement Training Schools. To be held in Anchorage, Alaska by the National Training Institute. For additional information, contact: National Training Institute, United States Department of Justice, Drug Enforcement Administration, Washington, D.C. 20537.

**July 26-28, 1978.** Rape Investigation Course. To be held at the Portland Hilton in Portland, Oregon. Presented by the Theorem Institute. Fee: \$225 For further

information, consult: July 10-14.

**July 31-August 4, 1978.** Short Course for Prosecutors. Conducted by Northwestern University School of Law. Fee: \$250. For further information, contact: Prof. Fred E. Inbau, Northwestern University School of Law, 357 East Chicago Avenue, Chicago IL 60611.

**August 7-10, 1978.** Police Discipline Course. Presented by the International Association of Chiefs of Police. To be held in Denver. For more details, consult: July 24-28.


**August 8-11, 1978.** Short Course: Models for Management. Presented by the Florida Institute for Law Enforcement. For further information contact: Florida Institute for Law Enforcement, St. Petersburg Junior College 6605 5th Avenue, North, P.O. Box 13489, St. Petersburg, FL 33733.

**August 9-11, 1978.** Staff Communications Skills Seminar. To be held in Cincinnati, Ohio by the Interface Resource Group. Program will be limited to 20 participants. The fee of \$275.00 covers all costs for the three-day, in-resident event, including tuition, materials, room and meals. For further information and registration, call or write: Programs Coordinator, Interface Resource Group, 3112 Wayne Avenue, Dayton, OH 45420. Telephone: (513) 254-6775.

**August 9-12, 1978.** Four-Day Certified Course in Lie Detection and Stress Analysis: The Mark II Voice Analyzer. Presented by Law Enforcement Associates Inc., at the Hilton Gateway Hotel, Newark, New Jersey. Fee: \$395. For more details, write or call: Law Enforcement Associates, Inc., 88 Holmes Street, Box 128, Belleville, NJ 07109. Telephone: (201) 751-0001.

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# Reviews of new books

Continued from Page 11

sporadic and uneven. From the limited attempts at experimentation have come team policing, crime prevention programs, directed patrol and community oriented policing, all of which are alternatives to traditional strategies. Continued experimentation will require more resources or the diversion of existing resources. The research units of those police agencies with only marginal or token commitments to change may be the first to feel budgetary constraints.

Caiden places the onus of revitalization upon the police themselves. Meaningful change will only be realized through the sincere conviction of police administrators. To be a vital institution police must confront the fallacies of the traditional American approach to policing.

In all, *Police Revitalization* is a succinct and comprehensive survey of the literature and practice of institutional change for police. It is the springboard for the second generation police change agent Caiden envisioned and more, it is an illustration of creative development noting that painful as internal change may be, it is less so than the imposition of external controls.

—William T. Veal

*The Mystique of Conspiracy: Oswald, Castro, and the CIA.* By Brian K. Bugge. Foreword by David Atlee Phillips. Self-published: P.O. Box 598, Staten Island, NY 10314. 148 pp. \$2.95 pb.

This well researched and highly informative book comes full circle in the Kennedy assassination controversy. Brian K. Bugge, formerly with the U.S. Secret Service, believes that the Kennedy assassination syndrome has become an enigma of our times, noting, "Gullible as we are, we have succeeded in transforming a calculating, cold-

blooded Presidential assassin into something of a folk hero!"

This book, originally produced as a masters thesis in criminal justice, has a quality of academic objectivity and intellectual design that one will not often find in the more saleable and sensational "conspiracy" books.

*The Mystique of Conspiracy* concerns itself mainly with the question of CIA and/or anti-Castro Cuban exile involvement in the assassination. Using three original criteria to test the plausibility of various theories which implicate the CIA and/or anti-Castro Cuban exiles in the assassination, Bugge analyzes three current major theories and states that they do not meet all three criteria and thus are not "highly plausible."

The book also contains a foreword by David Atlee Phillips, recently retired Western Hemisphere Division Chief of the CIA. Mr. Phillips's comments are surprisingly candid for an ex-CIA man. Although Mr. Phillips feels that the lingering doubts surrounding the assassination will probably never be resolved — "There seems to be a compulsive tendency in the United States to suspect conspiracy in the face of facts not easily explained" — he does see this book as a sore-needed turnaround to sensibility.

"It requires courage to remain dispassionate in the heat of emotion which has been kindled about the assassination of John F. Kennedy. Brian Bugge is to be commended. He has eschewed sensation and has laid the facts on the line. It is up to each of us to reach our own conclusion, but Bugge has performed a public service in making his case. What he has done is to ask us to look at the evidence. That is a refreshing suggestion."

—Allen Harris

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## New products for law enforcement

Items about new or modified products are based on news releases and/or other information received from the manufacturer or distributor. Nothing contained herein should be understood to imply the endorsement of Law Enforcement News.

**ALARM PANELS** — Sentry Technology has introduced a new line of solid-state alarm control panels designed to accept the company's Model 111A transmitter in installations that require central station monitoring.

The Model 200A is a combination burglary/fire/panic board, featuring momentary arming, end-of-line resistor supervised loops, entry/exit delays, bell cut-off timing, and pre-alarm warning. The unit's



fire portion provides a pulsing local alarm with separate trouble annunciation and test capability, while the device's panel alarm results in a continuous bell.

A less complex, low-cost panel, the Model 211A, has also been introduced. It includes entry-exit delays, bell cut-off timing, pre-alarm warning, and a supervised loop.

Further information can be obtained by writing: Sentry Technology, Inc., 222 Mt. Hermon Road, Santa Cruz, CA 95066. Telephone: (408) 438-3311.

**ALCOHOL ABUSE FILMS** — AIMS Instruction Media is distributing four color/sound films that graphically illustrate diverse aspects of alcohol abuse.

"New Beginnings: Women, Alcohol and Recovery" examines the question of women alcoholics, showing the actual recovery of three individuals in the natural settings of home, recreation and work. The film is designed to provide positive motivation for all persons — friends, family, employers, community groups, and women themselves — who are supportive of females attempting to achieve sobriety.

The second film, "My Name is David . . . and I'm an Alcoholic," portrays a crisis in the life of a middle-aged executive, who is threatened with dismissal from his job unless he agrees to participate in counseling sessions. Through the counseling, he comes to the realization that he is an alcoholic and agrees to go to a rehabilitation center. The film emphasizes that alcoholism is not a moral problem, while discussing types of treatment and family support programs, such as Al-Anon and Alateen.

Henry Fonda hosts the third AIMS film, "Alcohol Abuse: The Early Warning Signs," which is presented in the form of a self-test on alcoholism. Ten signs that may indicate a developing dependency on alcohol are dramatized to show potential victims, as well as their family and friends, the rationales alcoholics use to avoid admitting the problem.

The final film, "Demon Alcohol," is

a five-minute animation which utilizes music and humor to trace the serious problems of an alcoholic who uses the drug as an escape from job pressures and a boring wife, ultimately winding up on skid row.

The films are available individually for sale or rent. Price and ordering information can be obtained from: AIMS Instructional Media, Inc., 626 Justin Avenue, Glendale, CA 91201. Telephone: (213) 240-9300.

**RADAR SYSTEM** — M.P.H. Industries' model K-55 is a dash-mounted unit designed to track speeders from both stationary and moving positions, while remaining electronically silent to all types of radar detectors.

The basic system consists of a 10" x 8" x 1 3/4" readout module which digitally displays both patrol and target speeds and a compact conical horn antenna with an effective target range of up to one mile.

An innovative line of support accessories is available for the set, including a graphic recorder that operates in stationary and moving modes and an outboard display module, which resembles a hand-held calculator. The removable module can be carried to the violator's car, where he then can be shown the locked reading, and be required to remain in his vehicle for both his and the police officer's safety.

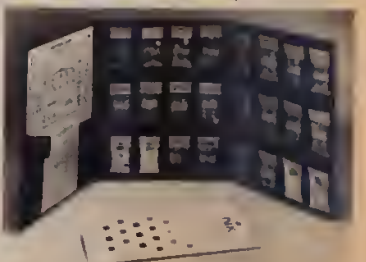
K-55 components feature solid state, plug-in board construction for dependability and ease of service. An alternate antenna unit, designed specifically for urban use, is available as part of the system.

For purchase or lease information, write: M.P.H. Industries, Inc., 15 South Highland, Chanute, KN 66720, or call collect: (316) 431-2830.

**DRUG TEST KIT** — The NIK Porta-Pac is a notebook-sized narcotics identification kit that was developed as a low-cost accessory to the widely-used NIK Field Narcotics Identification System.

Designed for maximum portability and ease of use, the kit contains 20 test packs which form the basis of a color-coded polytesting system.

Using the chemical packets in conjunction with the kit's test manual and Identidrug Chart, an investigator should be



able to screen and presumptively identify 25 controlled substances after less than 30 minutes of training.

Suitable for application in routine patrol, crime scene investigations and undercover operations, the kit is housed in a vinyl-clad folder which comes complete with a report pad.

For further details, write: Public Safety Division, Becton, Dickinson and Company, 1912 East Randol Mill Road, Suite 308, Arlington, TX 76011. Or call toll free: 1-800-433-7002.